IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 570 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANSHA C THAKORE & 1

Versus

STATE OF GUJARAT

Appearance:

MR BS SUPEHIA appointed for Petitioners

MR ST MEHTA APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 25/09/2000

ORAL JUDGEMENT

This Revision Application under section 397 read with section 401 CRPC has been preferred by the accused nos. 6 and 7 in Sessions Case No. 178/86. The accused no. 6 has died pending this Revision. Prosecution against him has abated and his name has been accordingly ordered to

be deleted.

It appears that in the month of April 1985, the city of Ahmedabad was experiencing riots and certain parts of the city were under curfew. Some residents of the city filed writ petitions being Special Criminal Applications Nos. 284 to 287 of 1985, and complained about police atrocity in the Khadia area of the city. Pursuant to the said petitions, the Division Bench of this court (Coram: Mr.Justice B.K.Mehta & Mr. Justice G.T.Nanavati) on 20th April, 1985, directed appointment of a Committee of two members to hold a discreet inquiry into the incidents complained of. Pursuant to the said order, a Committee of two of the Officers of this court Viz. the then Joint Registrar Shri A.H.Thaker and the then Additional Registrar Shri B.R.Acharya, in the company of the concerned advocates, petitioners, etc. visited the areas in question on 21st April, 1985, and 22nd April, 1985. It is contended that at the relevant time, the present petitioners also accompanied the said members of the Committee for inspection. On 22nd April, 1985, the curfew clamped on account of riots was relaxed at about 10-00 in the morning. Occurrence of violence was immediately reported. At 10-30 a.m. one Police Head Constable Laxmanbhai Desai was stabbed and done to death and one Home-guard also was injured. Pursuant to the said incident of the murder of the Head Constable Laxmanbhai Desai, the above referred Criminal Case has been registered against some ten accused persons. The petitioners-accused nos. 6 and 7 made application Ex. 8 and sought production of inspection report of the above referred Court Committee. It was categorically averred that while the said Committee was on inspection pursuant to the court's order dated 20th April, 1985, the said accused had accompanied the members of the Committee all along. On relaxation of the curfew, the residents of the locality collected in large number. The members of the Committee, therefore, decided to postpone the inspection. They, therefore, proceeded to Astodia Police Station. While they were waiting in the Astodia Police Station, news of the Head Constable having been stabbed and the Homeguard having been injured, had reached the Police Station. Considering the prevailing tense situation, the Court Committee suspended the inspection and were escorted to the High Court at around 12-30 in the afternoon. During all these hours, the said accused had accompanied the Court Committee. In the circumstances, there was no possibility of the said accused being present on the spot of the incident and they were wrongly arraigned as accused in Sessions Case No. 178/86. The application was contested by the prosecution. The

prosecution contended that it did not intend to rely upon the report of the Court Committee and the said report, therefore, was not required to be produced in the trial, nor the court should direct the prosecution to produce the said report. The learned Additional City Sessions Judge, Ahmedabad, Court No. 13, by his judgment and order dated 3rd October, 1986, rejected the said application. The learned Judge was of the view that the inspection was carried out by the Committee for the incidents of police atrocities alleged to have been committed on 14th, 15th and 16th April, 1985, and the same could not have even a remote nexus with the alleged murder of the Police Head Constable on 22nd April, 1985 at around 10-30 AM. Feeling aggrieved, the said accused have preferred the present Revision Application.

I am of the view that the learned trial Judge has grossly erred in refusing to order production of the above referred inspection report. It is obvious that the concerned accused have raised a plea of alibi . According to them, at the time of the alleged incident, the said accused were not present on the spot, and were present elsewhere. In such case, it is the duty of the police to investigate the plea of alibi and to find out the truth. It is also the duty of the court to consider and examine the plea of alibi raised by the defence before framing of the charge. The reference can be had to the judgments of this court in the matters of PRAVINKUMAR LALCHAND SHAH & STATE & ANR. (1982 {1} GLR 116); and of STATE OF GUJARAT VS DEEPAK JASWANTLAL SHETH (1998 {3} GLR 2240). In my view, therefore, it was imperative for the learned trial Judge to order production of the above referred inspection report of the Court Committee in exercise of the power conferred upon it under section 91 CRPC and also to examine the genuineness of the defence raised by the concerned accused before framing of the charge.

For the aforesaid reasons, this Revision Application is allowed. The order dated 3rd October, 1986, of the Additional City Sessions Judge, Ahmedabad, Court No. 13, passed below application Ex. 8 is quashed and set aside. The application Ex.8 preferred by the accused nos. 6 and 7 is allowed. The learned trial Judge will order production of inspection report of the Court Committee referred to hereinabove, and will consider the plea of alibi raised by the accused no. 7 before framing of the charge. Rule is made absolute accordingly. The interim relief is vacated. The learned trial Judge shall proceed further with the matter without

further loss of time. Registry will return the record and proceedings forthwith.

(MS R.M.DOSHIT J)

JOSHI